IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

JUDGMENT

SUBHASH CHANDRA VERSUS SURJEET SINGH
S.B.CIVIL SECOND APPEAL NO.20/87

DATE OF JUDGMENT :- April 05,2006

PRESENT
HON'BLE MR.JUSTICE PRAKASH TATIA.

Mr. R.L.Jangid, for the appellant.
Mr. S.L.Jain for the Respondent.

BY THE COURT :-

This appeal is by the Defendant against the judgment and decree of the Trial Court dated 30th November 1982 and dismissal of his appeal by the First Appellate Court by the Judgment and decree dated 12th Feb.1987.

Brief facts of the case are that one Labhu Ram was the owner of the plot. He sold plot plaintiff by an un-registered sale deed dated 15th March 1967 and according to plaintiff possession was delivered to the plaintiff by said Labhu Ram. The same Labhu Ram executed another sale deed but in favour of defendant that too after more than 11 years

on 17 June 1978. The defendant on the strength of sale deed in hisfavour threatened the plaintiff and wanted to take possession of the plot in dispute forcibly. The plaintiff, therefore, filed a suit for declaration and injunction.

The defendant submitted that sale deed executed in favour of the plaintiff is not a registered and, therefore, the title has not passed on to the plaintiff. Since defendant purchased the plot by registered sale deed, therefore, he became owner of the plot in dispute. The defendant also pleated that he is in possession of the said plot.

The trial court framed issues and Issue No.1 was whether the plaintiff is entitled for decree for injunction against the defendant for plot in dispute. The Issue No.2 was what is the effect of un-registered sale deed in favour of the plaintiff executed by Labhu Ram and whether the Court fees paid by the plaintiff is less ?

Both the parties led their evidence. Trial court held that property in dispute was sold by Labhu Ram to the plaintiff by un-registered sale deed dated 15th March 1967 and the plaintiff is in possession of the land in question since 15th March 1967. The Trial Court while deciding Issue No.2 held since the sale deed in favour of plaintiff is not registered therefore the plaintiff has not become owner of the property in

dispute. The said sale deed can be considered for collateral purpose and to find out the nature of the possession of the plaintiff. The Trial Court after holding that the plaintiff is in possession of the said suit property by virtue of un-registered sale deed, granted the decree for injunction only but did not grant decree for declaration of title in favour of the plaintiff. The Judgment and decree of the first appellate court dated 30th November 1982 was challenged by the defendant by preferring regular first appeal. The Appellate Court upheld the finding recorded by the Trial Court and dismissed the appeal by the judgment dated 12 Feb.1987. Hence, this Second Appeal.

The Second Appeal was admitted after framing following substantial questions of law:-

> 1.Whether in the facts and circumstance of the case, a decree could be passed in favour of the plaintiff, without considering the effect of sale of the disputed property made in favour of the defendant through a registered sale deed, particularly, in view of the provisions of Section 53-A of the Transfer of Property Act ?
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> 2. Whether the Courts below were justified in arriving at the finding about validity of sale made in favour of defendant by Labhuram son of Manaram Harijan, without there being a issue to that effect ?

The learned counsel for the appellant vehemently submitted that admittedly sale deed in favour of the plaintiff is not registered one, therefore, he has not acquired title to the property whereas defendant acquired title by registered sale deed.

Therefore,suit for injunction against owner was not maintainable and two courts below have committed error of law by decreeing suit for injunction of the plaintiff. It is also submitted that the plaintiff was not entitled for decree of injunction even if he was found in possession of the property in dispute under Section 53-A of the Transfer of Property Act. It is also submitted that the two courts below have committed error of law in declaring the sale deed in favour of plaintiff is of no effect because of reason that validity of the sale deed in favour of defendant was not under challenge.

I have considered the submissions of the learned counsel for the parties and perused the record also. So far as finding of fact, the execution of sale deed by vendor Labhu Ram in favour of plaintiff is concerned, that is finding of fact recorded by the two courts below. The said finding is based on evidence of record and suffers from no error of law. By virtue of sale deed dated 15th March 1967 the plaintiff came in possession of the suit property. This finding is also finding of fact based on documentary as well as oral evidence and suffers from no error of law. It is true that the sale deed in favour of plaintiff is not registered and because of this the title has not passed in favour of the plaintiff for the suit property but at the same time Section 53-A fully protected the rights of the plaintiff and restrain the vendor or person claiming through vendor from dispossessing the vendee plaintiff though

he has unregistered sale deed in his favour. Therefore, not because of reasons given by the two courts below but because of the reason of applicability of the Section 53-A,the plaintiff was entitled to decree for injunction against defendant.

The two courts below were fully justified in examining the effect of sale deed dated 5th June 1978 executed in favour of the defendant which is registered sale deed. The defendant himself set up his a case having foundation the sale deed dated 5th June 1978 . The defendant cannot question the courts finding recorded on sale deed dated 5th June 78 after setting up his claiming on the basis of sale deed dated 5th June 1978. The two courts below rightly observed that the sale deed executed in favour of the plaintiff is of the land having different measurements and the sale deed executed in favour of defendant have different measurements. In view of the above, the substantial question No.2 is decided against the appellant and the effect of the substantial question No.1 is in favour of the plaintiff respondent.

Consequently, the appeal has no merit,hence, dismissed.

(PRAKASH TATIA)J.

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